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# **How to Draft and Enforce a Conditional Sale**

**Modern American Law Lecture**



**Blackstone Institute, Chicago**

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# HOW TO DRAFT AND ENFORCE A CONDITIONAL SALE

BY  
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*One of a Series of Lectures Especially Prepared for the  
Blackstone Institute*



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## ARTHUR W. BLAKEMORE

Mr. Blakemore is a practicing attorney with offices at 40 Central Street, Boston, Mass. His wide experience in active practice since 1900 makes him particularly well qualified to handle the very practical subject of "How to Draft and Enforce a Conditional Sale."

He is a graduate of Harvard College and Harvard Law School. Mr. Blakemore also studied for a time at the Universities of Berlin and Heidelberg, Germany.

After he was admitted to the bar, he devoted his attention not only to practice but also to the preparation of legal articles on many phases of the law and has become known as an authority.

Mr. Blakemore is the author of "Real Property," in MODERN AMERICAN LAW. In addition he has written several articles in the Cyclopedia of Law and Procedure. He is the author of "Make Your Will," "Blakemore and Bancroft on Inheritance Taxes," "Gould and Blakemore on Bankruptcy," and has prepared articles for several other publications.

Along with his other activities Mr. Blakemore has found time to take an active part in civic enterprises. For a period of five years he has served as Alderman of the City of Newton, Massachusetts, where he resides.





# HOW TO DRAFT AND ENFORCE A CONDITIONAL SALE

*By*

ARTHUR W. BLAKEMORE, A.B., LL.B.

An offer may be received for purchase of goods from a customer whose credit is not of the best or cannot be ascertained. The buyer either will not consent, or is unable, to pay for the goods on delivery. Rather than lose the sale, dealers in machinery, furniture, or other personal property of value, are frequently willing to take a business risk by selling to persons of uncertain responsibility.

The question will then arise, how can one best protect himself in so doing. Usually the best way is to make some arrangement by which you have the right to retake the goods if the buyer becomes insolvent or does not pay as he agreed. If you fail to preserve such a right the buyer may sell the goods and put the money in his own pocket; or if he does not sell the goods, they may be taken by the assignee or trustee in bankruptcy for the creditors. They may even be attached by some other creditors who will thus obtain a prior lien upon them. In all these cases your chance of receiving adequate compensation is usually slight, for you become a general creditor along with the others, while if a conditional sale is properly drawn and recorded, where recording is

made necessary, it reserves to the seller rights superior even to one to whom the conditional vendee has wrongfully sold, although the buyer from the conditional vendee acted in good faith and paid value and had no actual notice of the conditional sale.<sup>1</sup>

It is the purpose of this lecture to show how a contract of sale may be drawn so that title to the goods may be legally reserved until payment is received. Not only will the proper method of drafting such agreements be indicated, but the nature of the conditional sale contract and the necessary steps to be taken after it has been drawn will be discussed.

### **THE CONTRACT OF CONDITIONAL SALE**

Conditional sales are discussed in MODERN AMERICAN LAW, SALES, Chapter VI, under the heading "Title Reserved for Security." Reference should be made thereto in connection with this lecture. A number of the general principals of the Law of Sales will be mentioned here. They will not be discussed at length, however, for they are carefully presented by Professor Horack.

A contract of conditional sale is an instrument by which an owner of personal property—

(1) Agrees to deliver the personalty to the buyer at once;

(2) Reserves title in himself until the purchase price is paid;

(3) Agrees that completion of the payments (which are usually made on the instalment plan) will render the buyer the absolute owner of the goods.

<sup>1</sup>Gamble v. Shingler, 96 S. E. 705 (Ga.).

**CONDITIONAL SALES—LEASES—MORTGAGES**

The difference between a lease and a conditional sale, in the strict sense of those terms, is that in a lease the parties intend the article leased to be returned at the end of a set period. The user pays certain sums called rent for use of the property. In the case of a conditional sale the parties contemplate that when the sums stipulated are paid the property shall belong absolutely to the buyer. In the case of the lease, the sums paid are simply in return for the use of the property. In the case of the conditional sale, the sums paid are part payment toward the purchase price.

In many states it is the custom to draft conditional sales in the form of leases on the theory that in this way the buyer most clearly acquires no claim to the title until final payment has been made. Such leases contain a clause giving the so-called lessee the right to a release of the lessor's rights in the property on final payment. The courts, however, have been very quick to protect the buyer in the case of leases of this character by declaring them to be what they are in fact—conditional sales.<sup>1</sup> The final payment of the so-called rent results in the transfer of the title, but this cannot be the effect in case of a real lease. The courts have reached this result without the aid of any statute. In some states, however, statutes have been passed which include such leases within their operation.

One of the essentials of a conditional sale is that the buyer must be bound to take title to the property and therefore a lease providing that the lessee can at any time return the property is not a conditional

<sup>1</sup>See, for example, *Hartford-Connecticut Trust Co. vs. Puritan Laundry Co.*, 111 A. 149 (Conn.).

sale. Whether an agreement shall be construed as a lease, a conditional sale, or a mortgage, the courts usually consider, depends upon its effect and not upon what the parties may have called it.<sup>1</sup>

But it should be borne in mind that a real lease may be used and the clause reserving to the lessee the privilege of a release from the lessor on payment of the last installment may be omitted.<sup>2</sup> One of the large shoe manufacturing companies puts out many of its machines on real leases. This transaction has the advantage of affording maximum protection to the manufacturer as the tenant thus acquires no interest whatever in the goods themselves. He has not even an inchoate title, and has no right to sell the leased property, nor any interest which his creditors can reach. On the other hand, where the competition is keen it is usually more difficult to get customers to take a lease than to sign a conditional bill of sale—the lease gives the lessee no prospect of ever acquiring title to the goods. For that reason you will probably prefer to have a conditional bill of sale.

A sale with mortgage back differs from a conditional sale in that in case of a mortgage the original property owner becomes the debtor, and hence statutes requiring recording of mortgages will not usually apply to conditional sales.<sup>3</sup>

A sale where the delivery is accompanied by a trade acceptance to be signed by the buyer is not a

<sup>1</sup>Corbett v. Riddle, 209 Fed. 811.

<sup>2</sup>Outcault Advertising Co. v. Citizens' State Bank, 180 N. W. 705 (Minn.).

<sup>3</sup>See Dobson Printers' Supply Co. v. Corbett, 82 So. 804 (Fla.). As to rule in Illinois, however, see post p. 21.

conditional sale which is a sale subject to a condition subsequent, but this is a conditional contract of sale in which the buyer does not even obtain a special title until he performs the condition precedent of signing the acceptance or paying cash.<sup>1</sup> This is a nice distinction but important and clear.

### **CONDITIONAL SALES TO MERCHANTS FOR RESALE**

It is very difficult to protect the seller when he sells to a retail dealer for sale in the ordinary course of business, as it is the general rule,<sup>2</sup> crystallized into law in the Uniform Act,<sup>3</sup> that in such case one who purchases in good faith from the retailer for value without notice has a clear title, even though the goods were sold to the retailer under a valid conditional sale. In Michigan there is a special recording statute for such cases.<sup>4</sup>

### **RIGHTS UNDER CONTRACT ARE ASSIGNABLE**

A conditional sale although it does not pass title still gives the buyer a special property in the thing sold which he may sell or mortgage while the seller under a conditional sale has an interest which he also can sell or mortgage.<sup>5</sup>

### **WHAT LAW GOVERNS THE CONDITIONAL SALE**

It is the general rule that the law of the place where the conditional sale was made determines all

<sup>1</sup>Firestone Tire & Rubber Co. v. Anderson, 180 N. W. 273 (Iowa).

<sup>2</sup>Spooner v. Cummings, 151 Mass. 313.

<sup>3</sup>Section 9.

<sup>4</sup>See Becker v. La Core, 179 N. W. 344 (Mich.)

<sup>5</sup>Worcester Morris Plan Co. v. Mader, 128 N. E. 777 (Mass.). See also King v. Cline, 194 P. 290 (Cal. App.).

questions of the validity, nature and construction of the sale. Questions of the validity of a sale can usually arise only where the rights of third parties are concerned as the conditional sale is universally upheld as between the parties. If a sale is good as against creditors in the state where it was made it will also be good against creditors when the goods are moved to another state, even though the law as to validity may be different in that state.<sup>1</sup> So if a conditional bill of sale is made where recording is not required it would still be good in another state to which the goods may be removed although in that state recording is essential. On the other hand if the law of the place where the sale is made requires recording a failure to record will invalidate the sale in another state in which recording is not required.

Where a conditional sale, made in one state, contemplates or provides that the property is to be delivered or used in another state the construction and validity of the contract is to be determined by the law of the latter state. Where, however, a third person purchases goods from the conditional buyer his rights must be determined by the law of the place where he contracts and not by the law of another state. The contract in question here is not the original contract, but the sale by the original buyer.<sup>2</sup>

<sup>1</sup>Where an article sold on conditional sale is taken by the buyer to another state and sold to a purchaser for value without notice, it is the general rule that if the conditional sale was properly recorded or was valid without record the conditional vendor can still enforce his rights, but the rule is otherwise in Texas. *Willys-Overland Co. v. Chapman*, 206 S. W. 978 (Tex. Civ. App.).

<sup>2</sup>For authorities on the above rules, reference may be had to the case of *Corbett v. Riddle*, 209 Fed. 811, and *In re Wall*, 207 Fed. 994.

### WHEN TITLE PASSES

In all cases the question may be vital as to just when the title to the goods passed under the terms of the sale. In determining this, the usual rules of the Law of Sales should be applied.

The chief question is when the particular goods became so set apart to the buyer that the seller cannot withdraw them from the operation of a conditional sale. This, as with any other sale, depends upon the intention of the parties as evidenced by the circumstances of the particular transaction. Where goods are delivered to a carrier for shipment to the buyer, ordinarily they become, from that instant, the property of the buyer, subject to the rights of the seller to stop them in transit before delivery to the buyer.

There is another rule which may affect this question to the effect that where anything remains for the seller to do in respect to the goods, the title does not finally pass until it is done. The writer has in mind, for example, a case where machinery was sold to a worthless contractor. The sale was not in proper form to protect the rights of the seller, but it happened that the contract did provide that the seller would set up the machinery on arrival at the buyer's property. The seller never had set it up and for this reason he was able to retake the machinery as against creditors of the buyer who had attached it. This was true notwithstanding the seller had already sent the buyer bills for the purchase price, and thus given the buyer credit—usually a certain indication of the intention to pass title.

In a true conditional sale there must be a delivery

of possession with the intention of passing immediate ownership, often called a special title, with the intention of reserving to the seller only the general title as security.<sup>1</sup>

### FORM OF THE CONTRACT

The form of the contract will depend upon the nature of the individual business. One form of contract might be very useful for a concern dealing in furniture while at the same time very awkward for a business house selling machinery. It will, of course, make a difference whether the business is done through agents on the road who cannot be clothed with authority to bind a bargain, or whether the business is all done in a store, where the whole transaction can be settled and decided on at once. If the business is done through agents it is usually best to have a form drawn up by which the buyer really makes an order for the goods to be sent to him under certain conditions while the order does not become binding on the seller until accepted by the home office.

This gives the seller an opportunity to look into the credit of the buyer and decide whether or not he desires to accept the offer. The only difficulty with it is that it leaves the buyer the right to revoke his offer or order at any time until it is finally accepted by the home office. But it is usually wise for the salesman to take this risk in a large sale where the seller has a credit department better able to decide on the financial responsibility of the buyer than the salesman.

<sup>1</sup>Firestone Tire & Rubber Co. v. Anderson, 180 N. W. 273 (Iowa).  
Conner v. Borland-Grannis Co., 128 N. E. 317 (Ill.).



Where a salesman simply takes an order he does not sign a contract as the agent of the seller and he therefore can act as a subscribing witness if the signature of the buyer was affixed in his presence. This may be very important where a witness is necessary, and the salesman may affix his name either at the time or later when the question for any reason may arise.

The acceptance of such an order may be made either by indorsement in writing on the order, which should be signed in duplicate and one copy sent back accepted to the seller. In the absence of this, sending the goods after receiving the order will be deemed acceptance of the order.

It seems wise to have some formality in the contract as it has been recently held that the buyer's signature to a mere delivery slip containing the words "Conditional sale. Title retained by W until paid in full" is insufficient to show that the parties had agreed to a conditional sale in the absence of evidence that the buyer read the delivery slip or assented to its terms, especially where the contract of sale was otherwise made.<sup>1</sup>

### **ORDER FORMS**

A form of order used by a large manufacturing concern is as follows:

#### **ORDER AND AGREEMENT SALE MACHINES**

UNION MACHINERY COMPANY (GENERAL DEPARTMENT),  
BOSTON, MASS.:

Please ship the following machines to the undersigned at his

<sup>1</sup>Utah Ass'n v. Buller, 194 P. 127 (Utah).

factory at.....in accordance with the terms and conditions hereinafter stated:

MACHINES.	
Total,	Price.

The undersigned agrees to purchase from you the machines hereby ordered and to pay you for the same upon demand the sums set opposite the names of the respective machines in the list above, amounting to a total of..... Dollars.

The title to all machines hereby ordered shall remain in you at all times, although possession shall have been given to the undersigned, until the amount of the purchase price of all shall have been paid in full; and on default in any payment you may retake possession of said machines free from all claims whatsoever, and may retain as consideration for the use of the said machines theretofore any sums which may have been theretofore paid in respect to said machines. The said machines shall at all times be held at the sole risk of the undersigned from loss, damage, or destruction, and they shall not nor shall any thereof be removed from the said factory of the undersigned without your written consent at any time before said payment in full shall have been made. The undersigned shall pay all taxes which may be assessed in respect to said machines from delivery thereof to the undersigned, upon whomsoever assessed.

The "machine numbers" of the machines hereby ordered may be entered in the above list by you upon or after acceptance of this order.

Delivery is to be f. o. b. your factory or office at.....  
and freight and transportation charges on said machines from  
your factory or office shall be paid by the undersigned.

(The detail of equipment and shipping directions may be added here or on back of form.)

Dated.....19....

Signature of Applicant.....

By.....

Order accepted, Boston,.....19....

**UNION MACHINERY COMPANY.**

Order taken by By.....

.....

*A Form Used in New England.* The following form of bilateral contract is in use in the New England States. The directions to salesmen should be altered to fit the territory covered:

#### **CONDITIONAL BILL OF SALE**

THE GOOD ROADS MACHINERY COMPANY (hereinafter called the vendor), a corporation duly organized by law, whose corporate existence is hereby admitted for all purposes, in consideration of the agreements hereinafter set forth, hereby sells and delivers to..... (hereinafter called the vendee), the articles mentioned in the following memorandum, *but on the following conditions, viz.:*—

That *title to said property shall remain in said vendor until* all the agreements of the vendee are fulfilled; and the vendee for himself, his heirs and assigns, hereby covenants with the vendor, its successors and assigns, that .... will pay the purchase price and notes as set forth in said memorandum, which notes are given only as collateral and may be sold or discounted, without waiver of any rights under this contract, and will also pay all taxes and liens which may accrue on said property; will keep it in good order, allow proper inspection, order and pay for all necessary repairs, keep it insured against fire in a sum satisfactory to the vendor (any proceeds of said insurance policy to inure to the benefit of the vendor in whatever name

the vendee may take it out); and will not alienate it or remove it from the state of.....or suffer it to be attached or to be in the real or constructive possession of others.

Upon breach of any of the above covenants, or bankruptcy or insolvency or general sale or assignment by the vendee of business or stock in trade, or whenever in the opinion of the vendor the property is threatened with loss, damage or destruction of any kind, except reasonable wear and tear, or with the imposition of a lien or adverse claim of any kind, said vendee will allow and assist in the removal of said property and for that purpose said vendor or its agents or attorneys may enter, re-take and remove said property wherever the same may be without liability of any kind and at the expense of the vendee up to the cost of removal to the vendor's Boston office. No delay in removing shall be construed a waiver of the vendor's right to remove.

*UPON THE PAYMENT OF ALL OF THE SAID NOTES AT MATURITY, TITLE TO SAID PROPERTY SHALL THEREUPON PASS TO SAID VENDEE;* and it is further expressly agreed that all sums paid before said final payment are rent and shall be kept by said vendor in any event as rent for the use of said property and to cover its decrease in market value.

It is further agreed that the vendee has read this contract and fully understands its terms and has received a copy thereof; that this contract shall be recorded by the vendee and at his expense whenever recording is necessary by law.

Witness our hands this.....day of.....  
192....

*THE GOOD ROADS MACHINERY COMPANY,*  
By.....  
Agent.

.....  
(Acknowledgment by buyer required in Connecticut.)

STATE OF CONNECTICUT, }  
COUNTY OF ..... }ss.

Then personally appeared the above-named.....  
 .....and acknowledged the foregoing instrument to be  
 .....free act.

Before me,

.....

### Notice to Salesmen

This contract need not be recorded or acknowledged if the goods are delivered to Rhode Island. It must be recorded with the City or Town Clerk within ten days where the buyer resides in Massachusetts, Maine and Vermont; and must be recorded and acknowledged by the buyer before a Justice or Notary or Town Clerk in Connecticut, and must be recorded in New Hampshire within twenty days after its date with an affidavit, the form for which may be obtained from the Boston office. *Where recording is necessary, see that recording precedes delivery.* On payment in full, see that contract is discharged of record to protect the Good Roads Machinery Company against suit by other creditors of the buyer.

*A Lease Held a Conditional Sale.* A common form of lease which has been held in Massachusetts to be a conditional sale notwithstanding its language, is as follows:

Boston, Feb. 28, 1892.

No. 1430.

This is to certify that I, Ella Bassett, of Boston, have this day hired and received from Smith Brothers the property described and valued in the following

### SCHEDULE

.....

Which articles are to be used by me at No. 1070 Washington Street. For the rent and use of which, and for all and any use of other goods previously leased by the said Smith Brothers, to me, I have this day paid to the said Smith Brothers, as rent

in advance, the sum of One Hundred Dollars, and I promise to pay them, or order, the sum of at least Twenty-five Dollars per month, and continue such payments until the sum to be paid for the use or rent shall equal the sum stated in the above schedule, with the addition of six per cent on the price of the goods named in such schedule; and further six per cent to be added to balance unpaid at the end of the first and every succeeding year, and to keep said articles insured in the sum of not less than (depending upon amount of schedule) for the benefit of said Smith Brothers. I agree not to remove said articles or any of them from the above named place without the consent of said Smith Brothers thereto in writing; and if I fail to pay said rents as above stipulated, or if I remove said articles from said place, or sell them, or underlet them, or suffer them to be attached, mortgaged, damaged or injured or fail to keep them insured as aforesaid, I thereby forfeit all right to said goods, and to further use of the same and to all moneys paid. I further agree and consent that said Smith Brothers and their agents and servants may at any and all times enter into and upon any house, room, and premises occupied by me, or any room, premises or home occupied by a tenant or lodger of mine, and view and examine all said articles of furniture and to remove the same without notice or demand and without being deemed guilty of any trespass or wrong, and in case of such removal said Smith Brothers may sell or appropriate each and all said goods and articles at once, as they may see fit, and in case they sell or appropriate them, or any of them, they may apply the proceeds after payment of cost and expense of finding, moving, keeping and selling them, to the payment of any rent or moneys due said Smith Brothers. I remain liable to them for, and agree to pay, any balance or sum still remaining due to them as back rent or otherwise. It is expressly understood and agreed that the title to each and all the above goods and articles and to each and all other goods and articles at any time leased to me by said Smith Brothers, remains in Smith Brothers, and they remain absolute owners of all the same, until the full price for all the goods in such leases is fully paid. But that upon full payment to said Smith Brothers of price named in all the leases and all

expenses, including expense of collection, of teaming, finding or getting possession of them, then they will release their claim and right in the goods above leased to me.

*WITNESS* my hand and seal on the day and in the year first above mentioned.

*ELLA BASSETT.*

IN PRESENCE OF

*JOHN BAXTER.*

I have this day received from Smith Brothers an exact copy of the above lease, the provisions of said lease having been fully understood by me before signing.

*ELLA BASSETT.*

### **CERTAIN REQUIREMENTS**

The essential rules as to the requirements of a valid conditional sale as they are known to exist at the time of publication of this Lecture will now be set out as conveniently as possible in alphabetical form. In some states statutes provide that the contract may be either acknowledged by the buyer or proven by the subscribing witness, and in such states it is important to have the contract witnessed, as it can be then filed or recorded without any acknowledgment by the seller.

Statutes of many states contain particular requirements as to conditional sales of railroad equipment and household furniture. All of these cannot be given here. Reference should be had to the statutes and decisions of the particular state in which the contract is made, or into which the goods are to be sent.

In Virginia the original contract should be recorded and should show the date of the contract, amount due, when payable, and description of the goods and the name of the buyer and seller. In

a very few states an oral contract of conditional sale may be enforced. But such a contract should not be made if it can be avoided on account of the difficulty of proving its exact terms.

### **SIGNATURE**

In most states it is sufficient that the instrument is signed by the buyer, whether in the form of an order or of a conditional sale. In a few states, however, signature by the seller is necessary. For instance, in Florida, Iowa and Pennsylvania, signature and acknowledgment by the seller is required. Contracts must be signed by all parties in Arizona, Iowa, New Hampshire, Washington, and Wisconsin. In all other states it would seem that signature by the buyer is sufficient, especially where the contract is in the form of an order by the buyer accepted by shipment of the goods. But where the contract is in bilateral form, it should be signed by both parties before recording to obviate any question that it was never completely executed.

Several states have special requirements as to witnesses which should be carefully examined. The provisions are so different in the various states that it is impossible to classify them. The safer way is to have the signatures of all parties witnessed by at least one disinterested party. In order to determine the validity of an agreement where this has not been done, resort must be had to the statutes of the individual states.

### **AFFIDAVIT OF INTEREST OF PARTIES**

In some States an affidavit in some form of the



actual indebtedness secured must be filed with the purpose of preventing so far as possible fraudulent devices for hindering attaching creditors, and the statutes in each State must be carefully studied and followed, as each State has its own special forms required. These States are as follows:—

Colorado

Maryland (some counties)

Nebraska

New Hampshire

Ohio

Pennsylvania

Wyoming

### SPECIAL RULES

In Colorado, the contract in order to be treated as a conditional sale must leave it optional with the buyer whether he will pay. If the buyer is bound to pay it is a sale and a mortgage back. In Illinois and Pennsylvania conditional sales are not valid as against third parties even when acknowledged and recorded. As a result in Illinois, the only method of retaining a lien as against third parties is by a chattel mortgage properly acknowledged and recorded.

In Pennsylvania a conditional sale contract is enforceable between the parties although not recorded or filed. But for protection against third parties you should have a lease or bailment contract with an option to purchase. Such a contract will be enforced as against a trustee in bankruptcy or against bona fide purchasers or attaching creditors, and all other third persons except a landlord who may have a lien. If the contract leaves title in the seller with no specific term of lease and no agreement for return of the property it is a conditional sale which is treated as an absolute sale. But if the contract provides a definite term of leasing with certain rent and for

return of the property at the end of the term, it is a lease even though on receipt of the full rent the lessee may elect to become the owner without further payment.

### RECORDING

A conditional sale is valid everywhere as between the original parties. It is, however, the policy of some states as expressed in their statutes to give notice of the existence of a conditional sale in some way in order to apprise third parties of the actual condition of the title.

The difficulty is that otherwise a man might be doing business and be apparently very prosperous with a large stock of machinery and merchandise which in reality he did not own, while as a result of his apparent prosperity he might easily induce merchants to send him goods on credit as they would not do if they knew the real situation. It is common in states where this view is taken to require that a conditional sale in order to be valid as against third persons shall be recorded with the city or town clerk or other recording official. This means that the contract shall be delivered by the parties to the recording officer together with the fee for recording. He will then enter it in an index and copy it in his books of record and return the original to the parties.

In some states however it is only necessary that the conditional sale be filed, which means that the original will be placed on file and indexed but not copied. In either case the prudent seller will not deliver the goods until the instrument is properly filed or recorded. The buyer of course should pay

for the recording or filing fee. The law often requires in addition to filing and recording that the instrument be acknowledged by one or both of the parties, or witnessed, and these requirements must be carefully complied with.

Conditional sales do not need to be recorded, filed, acknowledged or witnessed in the following states:

<b>Arkansas</b> (even if to be sold in the usual course of trade)	<b>Louisiana</b> <b>Mississippi</b> (may be oral)
<b>California</b>	<b>Nevada</b>
<b>District of Columbia</b>	<b>New Mexico</b>
<b>Florida</b>	<b>Pennsylvania</b>
<b>Idaho</b>	<b>Rhode Island</b>
<b>Illinois</b>	<b>Tennessee</b>
<b>Indiana</b>	<b>Utah</b>

In the above states which have no statutes governing conditional sales they are nevertheless commonly sustained by the courts in accordance with their terms.<sup>1</sup>

In the following states conditional sales must be recorded or filed to keep title as against third parties, and need not be acknowledged or witnessed:

<b>Alabama</b> (over \$200)	<b>North Carolina</b>
<b>Arizona</b>	<b>Ohio</b>
<b>Delaware</b>	<b>Oklahoma</b>
<b>Kansas</b>	<b>South Carolina</b> [See <i>Perkins v. Bank</i> , 20 S. E. 75 (S. C.)]
<b>Maine</b>	<b>South Dakota</b>
<b>Maryland</b>	<b>Texas</b>
<b>Minnesota</b> (at residence of seller)	<b>Washington</b>
<b>Montana</b>	<b>West Virginia</b>
<b>Nebraska</b>	<b>Wisconsin</b>
<b>New Hampshire</b>	<b>Wyoming</b>
<b>New Jersey</b>	
<b>New York</b>	

In four states the recording of conditional sales is

<sup>1</sup>See, for example, *Silverstein v. Kohler*, 183 P. 451 (Cal.); 136 P. 372 (Idaho). As to effect in Illinois and Pennsylvania, see, however, p. 21.

required only under certain circumstances, namely:

**Massachusetts** (bill of sale intended for security)

**Michigan** (See *Young v. Phillips*, 202 Mich. 480)

**Oregon** (when property becomes attached to real estate)

**Pennsylvania** (when property attached or to be attached to real estate)

In the following states conditional sales must be recorded or filed and must be acknowledged by the vendee in person in order to be recorded:

**Colorado**

(as to validity see page 21)

graph supplies and jewelry

pawned in certain cases)

**Connecticut**

(except phonographs or phono-

**Georgia**

**Vermont**

In the following states conditional sales must be recorded or filed and must be either acknowledged or witnessed:

**Georgia**

(signature by purchaser is sufficient)

**Missouri**

**North Carolina**

**North Dakota**

**Iowa**

**Oklahoma**

**Kentucky**

(recording at domicile of buyer, 155 Ky. 686)

(filed and not recorded)

**Virginia**

*Time of Recording.* In some states a contract must be filed or recorded at once or within a definite period, and sometimes even before delivery of the goods. These states are as follows:

**Alabama**, within thirty days of date.

**Connecticut**, within a reasonable time after its date.

**Florida**, need not be recorded or filed for two years, but if not paid at the end of that time it should be recorded and must be either acknowledged by the buyer or proven by a subscribing witness.

**Georgia**, within thirty days from date.

**Massachusetts**, within fifteen days of their date, unless the property sold becomes a fixture when within ten days of its date.

**Mississippi**, within three years from date.

**New Hampshire**, within twenty days of delivery of property.

**New York**, to be filed as soon as possible.

**Ohio**, should be filed or recorded forthwith.

**Oregon**, within ten days after property becomes attached to real estate.  
**South Carolina**, within ten days of delivery or execution.  
**Vermont**, within thirty days after delivery of the property.  
**Washington**, within ten days of delivery of property.

In most states, however, it is enough that the contract is filed or recorded at the time of shipment. The prudent seller should in all cases insist on recording before he actually sends the goods.

### PLACE OF RECORD

The usual American rule is that a conditional sale shall be recorded in the place where the buyer resides and this view prevails in the following states:

<b>Connecticut</b>	<b>New Hampshire</b>
<b>Iowa</b>	<b>New York</b>
<b>Maine</b>	<b>North Carolina</b>
<b>Minnesota</b>	<b>Ohio</b>
<b>Missouri</b>	<b>South Carolina</b>
<b>Nebraska</b>	<b>Washington</b>

In some states record is required in the place where the goods were at the time of sale, as in

<b>Arizona</b>	<b>Virginia</b>
<b>Montana</b>	<b>West Virginia</b>
<b>North Dakota</b>	<b>Wyoming</b>

Under the Uniform Conditional Sale Act recording must be made in the place where the goods are kept after the sale and this is also the rule in Kansas and Oklahoma.

In three states (Alabama, Georgia, Michigan) two records are required, one where the buyer resides and one where the goods were delivered. Record may be in either place in Texas.

### DURATION OF VALIDITY

The length of time during which the contract is

valid is limited in some states as follows:

<b>Arizona</b> , valid for three years.	<b>Minnesota</b> , valid for six years.
<b>California</b> , valid for two years if executed without the state, and for four years if executed within the state.	<b>Mississippi</b> , valid for six years.
<b>Colorado</b> , valid for two years if not to exceed \$2,500; five years, \$2,500 to \$20,000; ten years, if exceeds \$20,000.	<b>Missouri</b> , valid for five years.
<b>Delaware</b> , valid for three years.	<b>Nebraska</b> , valid for five years.
<b>District of Columbia</b> , valid for three years.	<b>Nevada</b> , valid for six years.
<b>Georgia</b> , valid for six years.	<b>New Jersey</b> , valid for three years.
<b>Idaho</b> , valid for five years.	<b>New Mexico</b> , valid for six years.
<b>Kansas</b> , valid for two years.	<b>North Carolina</b> , valid for three years.
<b>Kentucky</b> , valid for fifteen years.	<b>Oregon</b> , valid for six years.
<b>Michigan</b> , valid for one year.	<b>Rhode Island</b> , valid for six years.
	<b>South Dakota</b> , valid for three years.
	<b>Vermont</b> , valid for six years.
	<b>Washington</b> , valid for six years.
	<b>Wisconsin</b> , valid for three years.
	<b>Wyoming</b> , valid for one year.

In some Western States like California the seller should beware of short statutes of limitations which may bar him of any remedy at all for the purchase price.

### DISCHARGE

Some states like Kansas require that a discharge of the contract shall be entered on the record when full payment is made, and in such states the seller may be liable to a penalty for a failure to enter such a discharge. The purpose of these statutes is to prevent a fraudulent buyer from keeping an apparent lien outstanding on his property. Otherwise his creditors may thus be prevented from attaching his property through fear of complications with the seller over a conditional bill of sale which has in reality been discharged. In any case it is prudent for the seller to send the buyer on final payment a discharge in proper form to be recorded. The possi-

bility that the seller might be charged with colluding in a fraudulent scheme to hinder or delay the creditors of the buyer is thus obviated.

### RENEWAL OR REFILING

In some states the law requires a renewal or refiling of an instrument after a certain period to keep it alive, and these states are at present:

**Arizona**, refiling every year after three years.

**Colorado**, renewal at maturity and every two years thereafter.

**Delaware**, refiling annually after three years.

**Kansas**, renewal after two years and every two years thereafter.

**Michigan**, renewal annually.

**Minnesota**, must be renewed within thirty days of the end of two years from the date when due and in the same way each year thereafter, and this may be done by filing an affidavit of the mortgage showing the amount unpaid.

**Nebraska**, must be renewed by filing within thirty days before the end of five years from date of original contract, and within thirty days before end of each year thereafter, with affidavit.

**New Jersey**, refiling annually after three years.

**New York**, contract must be refiled within thirty days before end of each year whether or not property is to be attached to building.

**North Dakota**, renewal within ninety days before end of three years from first filing.

**Ohio**, contract must be refiled within thirty days before end of one year from date of previous filing.

**Oklahoma**, contract must be renewed within thirty days before end of three years of previous filing.

**South Dakota**, refiling annually after three years.

**Wisconsin**, refiling annually after three years.

**Wyoming**, renewal annually.

### PROTECTION AGAINST CONFUSION WITH LANDLORD'S LIEN OR ATTACHMENT TO REAL ESTATE

Where the contract of conditional sale is properly executed and recorded or filed, the instrument is good protection to the seller. The only consideration which the seller must have in mind beyond this is

to see that the buyer does not mingle the articles covered by the conditional sale with other property. This may be done by selling them or using them in the course of trade in such a way that they must necessarily be consumed or confused with other property. This may be very dangerous, since a contract for conditional sale of goods to be sold again at retail is fraudulent and against public policy in some states, and the original seller is deprived of his rights in the goods.

Furthermore, the seller must take care that the property, especially if heavy machinery, does not become a fixture so attached to realty as to become a part of it. An actual case will serve to illustrate this danger. A contractor bought from a business house a crushing plant which he proceeded to set up in the usual way on a quarry leased from a third party. After a time the contractor became insolvent. The crushing plant had been sold on a conditional bill of sale, but when the seller attempted to get the plant, which was worth some \$2500, he found that the owner of the quarry claimed a lien upon it for rent. The owner contended that it had become fixed to the realty and could not be removed.

After careful consideration, the seller decided that this question had better come up with him as the defendant than in any other way. In accordance with legal advice, the seller sent his men to the quarry at four o'clock in the morning and took off the plant before the land owner knew about it; the land owner never brought suit and the seller saved his crushing plant. Where, however, the article has actually become embedded or fixed so that it cannot



be removed without damage to the real estate, the land owner can undoubtedly obtain an injunction against the removal of the machinery. In the case of *Allis-Chalmers Co. v. City of Atlantic*, 144 N. W. 346 (Iowa), title to certain machinery sold conditionally was lost because the Supreme Court considered the property had become a fixture to the realty. In such cases the landowner may obtain relief in equity and there obtain an injunction against the removal of the property attached to the realty, although sold on a conditional contract of sale.<sup>1</sup> Some states like Massachusetts, New York, Oregon and Pennsylvania contain special requirements for recording where the property becomes a part of the real estate.<sup>2</sup>

A list is here given of the states in which the landlord's lien for rent does not take precedence over the rights of the seller of personal property:

Alabama	New Jersey
Arizona	New Mexico
Arkansas	New York
California	North Carolina
Connecticut	North Dakota
District of Columbia	Ohio
Idaho	Oklahoma
Indiana	Oregon
Indian Territory	Rhode Island
Kansas	South Carolina
Maine	South Dakota
Massachusetts	Tennessee
Michigan	Utah
Minnesota	Vermont
Missouri	Washington
Montana	Wisconsin
Nebraska	Wyoming
Nevada	

<sup>1</sup>*Camden v. Fairbanks, etc. Co.*, 86 So. 8 (Ala.).

<sup>2</sup>See also Uniform Conditional Sales Act, sec. 7, post p. 45.

This is also true in Kentucky except where the contract is made while the property is on the premises. But unless the contract of conditional sale has been recorded before the property has been placed on the premises, the landlord's lien defeats the rights of the seller in the following states:

Florida  
Georgia  
Illinois  
Maryland

Mississippi  
Virginia  
West Virginia

In Iowa, the landlord has no lien where the contract is recorded before property is placed on the premises. The law on this point is unsettled in Colorado and New Hampshire, while in Maryland, although there is no decision exactly in point, the courts are inclined to favor the landlord and a waiver should be obtained.

The landlord's rights are held superior to those of the seller in Delaware, Louisiana, and Pennsylvania. This is the rule in Texas unless the contract of conditional sale is filed before delivery.

### **EFFECT AND PRIORITY OF LIEN FOR REPAIRS**

Although there is much conflict of authority it seems to be the better view that the lien of the conditional seller is superior to that of an artisan who subsequently does work on the article.<sup>1</sup>

But in some jurisdictions the view prevails that where the conditional sale contemplates continual use and repairs the lien of the artisan for the repairs prevails.<sup>2</sup>

<sup>1</sup>Baughman Auto Co. v. Emanuel, 137 Ga. 354; 73 S. E. 511.

<sup>2</sup>Watts v. Sweeney, 127 Ind. 116, 26 N. E. 680. See comprehensive note in 33 Harvard Law Review 868.

**DESTRUCTION OF PROPERTY**

The seller should inform himself as to the law of the state into which the sale is made, for some courts hold that the destruction of the property before full payment relieves the buyer from further liability. This is true in:

**Alabama****Georgia****Massachusetts****New York****Washington**

In Louisiana, in case of partial destruction of the property, the buyer may elect to return the property or may keep it and when paying for it deduct the damages. In Pennsylvania, when the property is destroyed before payment, the buyer may recover a portion of the amount he has paid.

Where property is destroyed by fire or otherwise without the fault of either party, the buyer must stand the loss and is bound to make the balance of his payments according to agreement in the following states:

**Arkansas****Colorado****Indiana****Mississippi****Missouri****New Jersey****New York****Oklahoma****Tennessee****Vermont****North Carolina****Virginia****Wisconsin**

In either group of states the seller should see to it that insurance in the name of the seller is taken out to cover any loss on the property. In all cases the contract should contain a clause for insurance for the benefit of the seller as far as his interest may appear. For there is some question when the insur-

ance is taken out by the buyer in his name whether that does not cover simply the interest of the buyer, and it will probably put the seller to considerable expense to prove his rights in any such insurance money and collect upon it. It will be an additional safeguard if the contract expressly provides that any insurance taken out in the name of the buyer shall inure to the seller. But the best way to protect the seller is to take out a policy showing his interest and have it delivered to him at the time he delivers the goods.

#### **WHEN A SALE BY A BUYER IS A CRIMINAL OFFENSE**

In most of the states there are provisions making the buyer criminally liable if he disposes of the property subject to conditional sale without the consent of the seller. Such statutes are necessary, as it is the general rule that the buyer after he has paid a portion of the price has not the legal title, but has an equity like the mortgagor of real estate, which he can dispose of unless forbidden by statute. Such a sale would not be a crime at common law, although it might be a breach of his contract with the seller. A statute of this nature is an added protection to the seller, who can better afford to take a business risk in a state where such a statute is in force than in another. If the buyer does violate the statute the seller will have an additional hold on him, although in attacking him on this line one should be careful not to render oneself open to a charge of blackmail.

In the following states it is made by statute a criminal offense for the buyer under a contract of condi-

tional sale to sell the property covered by it without the consent of the conditional vendor:

Alabama	Montana
Arizona	Nebraska
Arkansas	Nevada
California	New Jersey
Colorado	New York
Delaware	North Dakota
District of Columbia	Ohio
Connecticut	Oklahoma
Florida	Oregon
Georgia	Pennsylvania
Indian Territory	South Carolina
Iowa	South Dakota
Kansas	Tennessee
Kentucky	Texas
Louisiana	Utah
Maine	Vermont
Maryland	Virginia
Massachusetts	Washington
Michigan	Wisconsin
Minnesota	Wyoming
Missouri	

In the following states there is no statute making it a crime for the buyer under a conditional sale contract to sell the property covered by it without permission:

Idaho	North Carolina
Illinois	Rhode Island
Indiana	West Virginia
New Mexico	

## REMEDIES OF SELLER

A seller under a conditional contract of sale usually has five remedies in case the buyer fails to keep up the instalments. (1) He can take the property itself; (2) he may bring suit for the money due; (3) he can bring an action for possession of the

property; (4) he may demand the property and then sue for damages for failure to deliver it; (5) or he may bring an action in equity to foreclose the lien under the contract. The last remedy is peculiarly advantageous where the property has become attached to real estate and it cannot be removed without injury to the property. In such a case the seller cannot bring action for possession, but if he brings a bill in equity for foreclosure all parties in interest can be summoned in and the rights of all parties settled.

Where there is no provision of law on the subject, the seller will have the right to go and take the property without formality, using any means necessary to do so short of actual breach of the peace. If the buyer forcibly resists his attempt to take the property, the seller must then get possession by legal means, as by writ of replevin or foreclosure. Before commencing proceedings to enforce a conditional sale you should first make sure that proper demand has been made, as in many cases the law requires demand before a forfeiture can be declared.

In some states additional protection is furnished the buyer by statutes providing that when the seller takes the property for failure of the buyer to make the payments he must give certain notice and offer the property at public sale after opportunity to the buyer to redeem his contract. It will be generally held as it has been in New York that a provision in the contract by which the buyer purports in advance to waive his right to have this procedure used is against public policy and void. The buyer cannot in advance waive his statutory right of redemption or

his right to have the property sold at public auction.

### **IN CASE OF BANKRUPTCY**

Where a conditional contract of sale is properly drawn the seller is not a secured creditor of the buyer within the language of the bankruptcy act, and should not file a claim as such, although he can do so if he desires. The trustee in bankruptcy is vested with all the rights of a creditor holding a lien, and therefore the trustee has a right to attack any conditional sale on the ground that it is not properly recorded or filed. Probably the best method of procedure is for the seller to file a petition to the referee setting out the facts and asking for payment in full or for a return of the property. The court will thereupon act on this petition and will undoubtedly sustain the rights of the seller if the contract of sale is properly drawn.

### **ELECTION OF REMEDIES**

Before bringing proceedings under a conditional sale the seller should consider very carefully just what his remedy will be. It is the law in most states, and it is likely to be so held in any state where it has not yet been decided, that suing for the debt and taking possession of the property under a conditional contract of sale are inconsistent remedies. If the seller pursues one he is deemed to have waived the other. It may well be that bringing suit for the debt will be such an election to pursue that remedy that it will confirm title in the buyer. This will enable him to make a valid sale or mortgage of the property

to a third person which will be superior then to the seller's lien. An attaching creditor may in the same way obtain a superior lien.

In all such states where you must elect, the question will be a practical one as to whether the property covered by the conditional sale in its present condition is worth more than other property of the debtor which you might hope to attach or levy upon in a suit for the purchase price. In considering this question, the seller should not of course forget that bankruptcy proceedings brought by or against the debtor within four months of his attachment will nullify it, while his lien under the conditional sale cannot be affected by bankruptcy. The seller's decision will thus depend on what he can ascertain as to the property and prospects of the debtor. If the debtor is likely to go into bankruptcy, attempt should be made to enforce the lien given under the contract of conditional sale and the vendor's attorney should not bring suit for the purchase price.

There may be cases, however, where a threat to take the property will be sufficient to obtain a settlement. There may be other cases where the commencement of suit for the purchase price will achieve the same happy result without the expense and trouble of actually taking the property. All the information available should first be obtained and a decision arrived at in accordance with the prospects of the individual case. In many cases as a matter of business policy it is inexpedient to push customers too hard for the purchase price of goods sold.



The seller must elect between taking the property and bringing suit for the debt due, in the following states:

Arkansas  
California  
Connecticut  
Delaware  
District of Columbia  
Florida  
Indiana  
Iowa  
Kansas  
Maryland  
Massachusetts  
Michigan

Minnesota  
Missouri  
Nebraska  
New York  
Ohio  
Oregon  
Pennsylvania  
South Carolina  
Texas  
Vermont  
Washington  
Wisconsin

The rule seems to be that the seller may obtain judgment for the purchase price and if the judgment proves worthless he may still retake the property in the following states:

Georgia  
Michigan  
Mississippi  
New Jersey

New York  
North Carolina  
South Dakota

In Alabama, a seller can probably sue for the purchase price and thereafter replevy the property if there is no intervening lien. No election seems to be necessary in Connecticut and Maine. This is true in Pennsylvania, when no judgment has been obtained. It has been held in Massachusetts and New York that a suit on certain instalment notes when due does not waive the buyer's right to take the property to enforce payment of other notes.

### EFFECT OF EXTENSION

The seller must beware how he grants the buyer an extension of time for payment as if he does this

he cannot claim a forfeiture during the time of extension though there was no consideration for the extension.<sup>1</sup>

### LACHES

The seller should always act promptly to protect his rights especially against innocent third parties as he may lose his claim by delay and be estopped to assert his rights.<sup>2</sup>

### ILLEGALITY

The matter of illegality affects the right of a vendor to a conditional sale in a peculiar way. In the ordinary contract of sale, mere knowledge on the part of the seller that the article sold is to be used for an illegal purpose is not sufficient to prevent recovery of the price. The vendor will not lose his rights unless in some way he assists the vendee in the illegal purpose although in Maine and Massachusetts, the contrary has been held with reference to the sale of intoxicating liquors in violation of statute.<sup>3</sup>

The distinction is also made that where the sale is of goods to be used by the vendee in aid of the perpetration of a heinous crime, such as treason, the contract will be considered invalid. But since ordinarily the agreement of sale is held valid, the vendor may have such remedies as he would usually be allowed with any contract of sale.

<sup>1</sup>Reinke v. Findley Electric Co., 180 N. W. 236 (Minn.).

<sup>2</sup>Harter v. Delno, 194 P. 300 (Cal. App.).

<sup>3</sup>The authorities are reviewed in the case of Graves v. Johnson, 156 Mass. 211, 30 N. E. 818, 15 L. R. A. 834.

Under the contract of conditional sale, the law is different. Where the vendor reserves the right to retake the property whenever he deems it is insecure even before the deferred payments have matured (as is usually done) the control of the use of the property is left in his hands, hence the law considers that the vendor has joined in the vendee's illegal purpose. Otherwise he would have exercised his privilege of control over the property to prevent its use contrary to public policy. On this theory, the vendor in a bill of conditional sale loses title to the goods against an execution creditor of the vendee.<sup>1</sup>

### **FORFEITURE OF PROPERTY USED IN ILLEGAL LIQUOR BUSINESS**

A new danger to the seller under a conditional sale has arisen with the advent and general enforcement of prohibition, as he must now at his peril see that the article sold is not used in violation of the prohibition laws. The power of the prohibition enforcement officers to condemn and sell at public sale any property used in such illegal practices means that such sale will probably be made without regard to the rights of the real owner of the property. Especial danger is run by the conditional vendor of trucks or automobiles as if they are found used for transporting liquor they may be confiscated. At this writing the law on this subject can hardly be said to be crystallized but there is already ample authority for cutting off the rights of the conditional vendor, as appears by the following cases:

<sup>1</sup>This result was reached in the case of *Standard Furniture Co. v. Van Alstine*, 22 Wash. 670, 62 Pac. 145, 51 L. R. A. 889, and *Abbott Furniture Co. v. Mobley*, 141 Ga. 456, 81 S. E. 196.

Commercial Investment Trust v. U. S., 261 Fed. 330.

Logan v. U. S., 260 Fed. 746.

Landers v. Commonwealth, 101 S. E. 778 (Va.).

United States v. Seven Passenger Paige Car, 259 Fed. 641.

United States v. Mincey, 254 Fed. 287, 5 A. L. R. 211.

The vendor may take what comfort he can out of the following cases:

Shrouder v. Sweat, 148 Ga. 378.

Hatcher Co. v. Foster, 101 S. E. 299 (Ga. App.).

One Hudson v. State, 187 P. 806 (Okla.).

United States v. One Ford Automobile, 259 Fed. 894, 262 Fed. 374.

State v. Davis, 184 P. 161 (Utah).

All we can safely say at present is that the conditional vendor runs a grave risk if the property is captured while used in violation of the prohibition laws. The subject is discussed in an excellent note in the Harvard Law Review for December, 1920.

### REMEDIES OF BUYER

Where the seller wrongfully takes possession of the goods sold under conditional sale, the buyer, having no complete title, cannot maintain trover for conversion of the goods,<sup>1</sup> but he may treat the contract as rescinded and sue for the return of the money he has paid on account of it.<sup>2</sup>

### THE UNIFORM CONDITIONAL SALES ACT

A draft of a Uniform Conditional Sales Act was completed in 1918 by the Commissioners on Uniform State Laws and has already been adopted in the following states:

<sup>1</sup>MacArthur Bros. Mercantile Co. v. Hagihara, 194 P. 336 (Ariz.).

<sup>2</sup>Daskalopolis v. Mulvanity, 111 A. 832 (N. H.).

**Arizona**

**Delaware**

**New Jersey** (amended by St. 1920, sec. 68).

**South Dakota**

**Wisconsin**

**West Virginia**

It has also been adopted in Alaska.

In these jurisdictions, therefore, the rules laid down in the foregoing discussion should be read in connection with this statute.

The full text of the Uniform Law will be found in the Appendix, and it should be carefully studied as it represents a careful and intelligent attempt not only to avoid the inconsistencies of varying state laws but to place the rights of both parties to a conditional sale on a clear and fair basis.

*Arthur H. Blakesley*

## APPENDIX

## UNIFORM CONDITIONAL SALES ACT

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**AN ACT CONCERNING CONDITIONAL SALES AND TO  
MAKE UNIFORM THE LAW RELATING THERETO**

SECTION 1. [Definition of Terms.] In this Act "Conditional sale" means (1) any contract for the sale of goods under which possession is delivered to the buyer and the property in the goods is to vest in the buyer at a subsequent time upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency; or (2) any contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value of the goods, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming the owner of such goods upon full compliance with the terms of the contract.

"Buyer" means the person who buys or hires the goods covered by the conditional sale, or any legal successor in interest of such person.

"Filing district" means the sub-division of the state in which conditional sale contracts, or copies thereof, are required by this act to be filed.

"Goods" means all chattels personal other than things in action and money, and includes emblements, industrial growing crops, and things attached to or forming a part of land which are agreed to be severed before sale or under the conditional sale.

"Performance of the condition" means the occurrence of the event upon which the property in the goods is to vest in the buyer, whether such event is the performance of an act by the buyer or the happening of a contingency.

“Person” includes an individual, partnership, corporation, and any other association.

“Purchase” includes mortgage and pledge.

“Purchaser” includes mortgagee and pledgee.

“Seller” means the person who sells or leases the goods covered by the conditional sale, or any legal successor in interest of such person.

SECTION 2. [Primary Rights of Buyer.] The buyer shall have the right when not in default to retain possession of the goods, and he shall also have the right to acquire the property in the goods on the performance of the conditions of the contract. The seller shall be liable to the buyer for the breach of all promises and warranties, express or implied, made in the conditional sale contract, whether or not the property in the goods has passed to the buyer.

SECTION 3. [Primary Rights of Seller.] The buyer shall be liable to the seller for the purchase price, or for instalments thereof, as the same shall become due, and for breach of all promises made by him in the conditional sale contract, whether or not the property in the goods has passed to the buyer.

SECTION 4. [Conditional Sales Valid Except as Otherwise Provided.] Every provision in a conditional sale reserving property in the seller after possession of the goods is delivered to the buyer, shall be valid as to all persons, except as hereinafter otherwise provided.

SECTION 5. [Conditional Sales Void as to Certain Persons.] Every provision in a conditional sale reserving property in the seller shall be void as to any



purchaser from or creditor of the buyer, who, without notice of such provision, purchases the goods or acquires by attachment or levy a lien upon them, before the contract or a copy thereof shall be filed as hereinafter provided, unless such contract or copy is so filed within ten days after the making of the conditional sale.

SECTION 6. [Place of Filing.] The conditional sale contract or copy shall be filed in the office

in [the city] [county] [registration district] in which the goods are first kept for use by the buyer after the sale. It shall not be necessary to the validity of such conditional sale contract, or in order to entitle it to be filed, that it be acknowledged or attested. This section shall not apply to the contracts described in Section 8.

SECTION 7. [Fixtures.] If the goods are so affixed to realty, at the time of a conditional sale or subsequently as to become a part thereof and not to be severable wholly or in any portion without material injury to the freehold, the reservation of property as to any portion not so severable shall be void after the goods are so affixed, as against any person who has not expressly assented to the reservation. If the goods are so affixed to realty at the time of a conditional sale or subsequently as to become part thereof but to be severable without material injury to the freehold, the reservation of property shall be void after the goods are so affixed as against subsequent purchasers of the realty for value and without notice of the conditional seller's title, unless the conditional sale contract, or a copy thereof, together with a

statement signed by the seller briefly describing the realty and stating that the goods are or are to be affixed thereto, shall be filed before such purchase in the office where a deed of the realty would be recorded or registered to affect such realty. As against the owner of realty the reservation of the property in goods by a conditional seller shall be void when such goods are to be so affixed to the realty as to become part thereof but to be severable without material injury to the freehold, unless the conditional sale contract, or a copy thereof, together with a statement signed by the seller briefly describing the realty and stating that the goods are to be affixed thereto, shall be filed before they are affixed, in the office where a deed would be recorded or registered to affect such realty.

SECTION 8. [Railroad Equipment or Rolling Stock.] No conditional sale of railroad, or street or interurban railway equipment or rolling stock shall be valid as against the purchasers and creditors described in Section 5, unless the contract shall be acknowledged by the buyer or attested in like manner as a deed of real property, and the contract, or a copy thereof, shall be filed or recorded in the office of ; and unless when any engine or car so sold is delivered there shall then be plainly and conspicuously marked upon each side thereof the name of the seller, followed by the word "owner."

SECTION 9. [Conditional Sale of Goods for Resale.] When goods are delivered under a conditional sale contract and the seller expressly or impliedly consents that the buyer may resell them prior to per-

formance of the condition, the reservation of property shall be void against purchasers from the buyer for value in the ordinary course of business, and as to them the buyer shall be deemed the owner of the goods, even though the contract or a copy thereof shall be filed according to provisions of this act.

SECTION 10. [Filing.] The filing officer shall mark upon the contract or copy filed with him the day and hour of filing and shall file the contract or copy in his office for public inspection. He shall keep a separate book in which he shall enter the names of the seller and buyer, the date of the contract, the day and hour of filing, a brief description of goods, the price named in the contract and the date of cancellation thereof; except that in entering the contracts mentioned in Section 8 the  
shall record either the sum remaining to be paid upon the contract or the price of the goods. Such book shall be indexed under the names of both seller and buyer. For filing and entering such contract or copy the filing officer shall be entitled to a fee of [ten cents], except that for filing and entering a contract described in Section 8 the  
shall be entitled to a fee of [one dollar].

SECTION 11. [Refiling.] The filing of conditional sale contracts provided for in Sections 5, 6 and 7 shall be valid for a period of three years only. The filing of the contract provided for by Section 8 shall be valid for a period of fifteen years only. The validity of the filing may in each case be extended for successive additional periods of one year from the date of refiling by filing in the proper filing district



provides, the buyer may, without the consent of the seller, remove the goods from any filing district and sell, mortgage or otherwise dispose of his interest in them; but prior to the performance of the condition, no such buyer shall remove the goods from a filing district in which the contract or a copy thereof is filed, except for temporary uses for a period of not more than thirty days, unless the buyer not less than ten days before such removal shall give the seller personally or by registered mail written notice of the place to which the goods are to be removed and the approximate time of such intended removal; nor prior to the performance of the condition shall the buyer sell, mortgage or otherwise dispose of his interest in the goods, unless he, or the person to whom he is about to sell, mortgage or otherwise dispose of the same, shall notify the seller in writing personally or by registered mail of the name and address of the person to whom his interest in the goods is about to be sold, mortgaged or otherwise transferred, not less than ten days before such sale, mortgage or other disposal. If any buyer does so remove the goods, or does so sell, mortgage or otherwise dispose of his interest in them without such notice or in violation of the contract, the seller may retake possession of the goods and deal with them as in case of default in payment of part or all of the purchase price. The provisions of this section regarding the removal of goods shall not apply, however, to the goods described in Section 8.

SECTION 14. [Refiling on Removal.] When, prior to the performance of the condition, the goods are removed by the buyer from a filing district in

this state to another filing district in this state in which such contract or a copy thereof is not filed, or are removed from another state into a filing district in this state where such contract or copy is not filed, the reservation of the property in the seller shall be void as to the purchasers and creditors described in Section 5, unless the conditional sale contract or a copy thereof shall be filed in the filing district to which the goods are removed, within ten days after the seller has received notice of the filing district to which the goods have been removed. The provisions of this section shall not apply, however, to the goods described in Section 8. The provisions of Section 11 regarding the duration of the validity of the filing and the necessity for refiling shall apply to contracts or copies which are filed in a filing district other than that where the goods are originally kept for use by the buyer after the sale.

SECTION 15. [Fraudulent Injury, Concealment, Removal or Sale.] When, prior to the performance of the condition, the buyer maliciously or with intent to defraud, shall injure, destroy or conceal the goods, or remove them to a filing district where the contract or a copy thereof is not filed, without having given the notice required by Section 13, or shall sell, mortgage, or otherwise dispose of such goods under claim of full ownership, he shall be guilty of a crime and upon conviction thereof shall be imprisoned [in the county jail] for not more than [one year] or be fined not more than [\$500] or both.

SECTION 16. [Retaking Possession.] When the buyer shall be in default in the payment of any sum

due under the contract, or in the performance of any other condition which the contract requires him to perform in order to obtain the property in the goods, or in the performance of any promise the breach of which is by the contract expressly made a ground for the retaking of the goods, the seller may retake possession thereof. Unless the goods can be retaken without breach of the peace, they shall be retaken by legal process, but nothing herein shall be construed to authorize a violation of the criminal law.

SECTION 17. [Notice of Intention to Retake.] Not more than forty nor less than twenty days prior to the retaking, the seller, if he so desires, may serve upon the buyer personally or by registered mail a notice of intention to retake the goods on account of the buyer's default. The notice shall state the default and the period at the end of which the goods will be retaken, and shall briefly and clearly state what the buyer's rights under this act will be in case they are retaken. If the notice is so served and the buyer does not perform the obligations in which he has made default before the day set for retaking, the seller may retake the goods and hold them subject to the provisions of Sections 19, 20, 21, 22 and 23 regarding resale, but without any right of redemption.

SECTION 18. [Redemption.] If the seller does not give the notice of intention to retake described in Section 17, he shall retain the goods for ten days after the retaking within the state in which they were located when retaken, during which period the buyer, upon payment or tender of the amount due under

the contract at the time of retaking and interest, or upon performance or tender of performance of such other condition as may be named in the contract as precedent to the passage of the property in the goods, or upon performance or tender of performance of any other promise for the breach of which the goods were retaken, and upon payment of the expenses of retaking, keeping and storage, may redeem the goods and become entitled to take possession of them and to continue in the performance of the contract as if no default had occurred. Upon written demand delivered personally or by registered mail by the buyer, the seller shall furnish to the buyer a written statement of the sum due under the contract and the expense of retaking, keeping and storage. For failure to furnish such statement within a reasonable time after demand, the seller shall forfeit to the buyer [\$10] and also be liable to him for all damages suffered because of such failure. If the goods are perishable so that retention for ten days as herein prescribed would result in their destruction or substantial injury, the provisions of this section shall not apply, and the seller may resell the goods immediately upon their retaking. The provision of this section requiring the retention of the goods within the state during the period allowed for redemption shall not apply to the goods described in Section 8.

SECTION 19. [Compulsory Resale by Seller.] If the buyer does not redeem the goods within ten days after the seller has retaken possession, and the buyer has paid at least fifty per cent of the purchase price at the time of the retaking, the seller shall sell them at public auction in the state where they were at the



time of the retaking, such sale to be held not more than thirty days after the retaking. The seller shall give to the buyer not less than ten days' written notice of the sale, either personally or by registered mail, directed to the buyer at his last known place of business or residence. The seller shall also give notice of the sale by at least three notices posted in different public places within the filing district where the goods are to be sold, at least five days before the sale. If at the time of the retaking \$500 or more has been paid on the purchase price, the seller shall also give notice of the sale at least five days before the sale by publication in a newspaper published or having a general circulation within the filing district where the goods are to be sold. The seller may bid for the goods at the resale. If the goods are of the kind described in Section 8, the parties may fix in the conditional sale contract the place where the goods shall be resold.

SECTION 20. [Resale at Option of Parties.] If the buyer has not paid at least fifty per cent of the purchase price at the time of the retaking, the seller shall not be under a duty to resell the goods as prescribed in Section 19, unless the buyer serves upon the seller, within ten days after the retaking, a written notice demanding a resale, delivered personally or by registered mail. If such notice is served, the resale shall take place within thirty days after the service, in the manner, at the place and upon the notice prescribed in Section 19. The seller may voluntarily resell the goods for account of the buyer on compliance with the same requirements.

SECTION 21. [Proceeds of Resale.] The proceeds of the resale shall be applied (1) to the payment of the expenses thereof, (2) to the payment of the expenses of retaking, keeping and storing the goods, (3) to the satisfaction of the balance due under the contract. Any sum remaining after the satisfaction of such claims shall be paid to the buyer.

SECTION 22. [Deficiency on Resale.] If the proceeds of the resale are not sufficient to defray the expenses thereof, and also the expenses of retaking, keeping and storing the goods and the balance due upon the purchase price, the seller may recover the deficiency from the buyer, or from anyone who has succeeded to the obligations of the buyer.

SECTION 23. [Rights of Parties Where There Is No Resale.] Where there is no resale, the seller may retain the goods as his own property without obligation to account to the buyer except as provided in Section 25, and the buyer shall be discharged of all obligation.

SECTION 24. [Election of Remedies.] After the retaking of possession as provided in Section 16 the buyer shall be liable for the price only after a resale and only to the extent provided in Section 22. Neither the bringing of an action by the seller for the recovery of the whole or any part of the price, nor the recovery of judgment in such action nor the collection of a portion of the price, shall be deemed inconsistent with a later retaking of the goods as provided in Section 16. But such right of retaking shall not be exercised by the seller after he has collected the entire price, or after he has claimed a lien upon

the goods, or attached them, or levied upon them as the goods of the buyer.

SECTION 25. [Recovery of Part Payments.] If the seller fails to comply with the provisions of Sections 18, 19, 20, 21 and 23 after retaking the goods, the buyer may recover from the seller his actual damages, if any, and in no event less than one-fourth of the sum of all payments which have been made under the contract, with interest.

SECTION 26. [Waiver of Statutory Protection.] No act or agreement of the buyer before or at the time of the making of the contract nor any agreement or statement by the buyer in such contract, shall constitute a valid waiver of the provisions of Sections 18, 19, 20, 21 and 25; except that the contract may stipulate that on such default of the buyer as is provided for in Section 16, the seller may rescind the conditional sale, either as to all the goods or as to any part thereof for which a specific price was fixed in the contract. If the contract thus provides for rescission, the seller at his option may retake such goods without complying with or being bound by the provisions of Sections 17 to 25 inclusive, as to the goods retaken, upon crediting the buyer with the full purchase price of those goods. So much of this credit as is necessary to cancel any indebtedness of the buyer to the seller shall be so applied, and the seller shall repay to the buyer on demand any surplus not so required.

[In Arizona, Delaware, New Jersey, South Dakota and Alaska, Section 26 does not contain the words beginning with "except that the," etc., and ending with "not so required."]

SECTION 27. [Loss and Increase.] After the delivery of the goods to the buyer and prior to the retaking of them by the seller, the risk of injury and loss shall rest upon the buyer. The increase of the goods shall be subject to the same conditions as the original goods.

SECTION 28. [Act Prospective Only.] This act shall not apply to conditional sales made prior to the time when it takes effect.

SECTION 29. [Rules for Cases Not Provided For.] In any case not provided for in this act the rules of law and equity, including the law merchant, and in particular those relating to principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall continue to apply to conditional sales.

SECTION 30. [Uniformity of Interpretation.] This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 31. [Short Title.] This act may be cited as the Uniform Conditional Sales Act.

SECTION 32. [Inconsistent Laws Repealed.] Except so far as they are applicable to conditional sales made prior to the time when this act takes effect, the following acts shall be and hereby are repealed. [Here repeal all existing acts in the field of conditional sales.]

SECTION 33. [Time of Taking Effect.] This act shall take effect





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